IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18-12-2007

CORAM

THE HON'BLE MR.JUSTICE R. REGUPTHI

CRL.O.P.Nos.21904, 32218 and 32711 of 2004
and
Crl.M.P.Nos.10412, 6890 and 10210 of 2004

A.Anand ... Petitioner in all the petitions

vs

Mrs.Padmavathy Govindan .... Respondents in Crl.O.P.Nos. 21904 and 32218 of 2004

R. Govindan .... Respondent in Cr.O.P.No. 32711 of 2004

Petitions filed under Sec.482 Cr.P.C for the relief as stated therein.

For petitioner : Mr.C.N. Niranjan

For respondents: Mr. Jayaraman for M/s Jayaraman Associates

COMMON ORDER

These petitions are filed seeking for a direction to call for the records and quash the complaints in C.C.Nos.224, 225 and 2349 of 2004 on the file of IX Metropolitan Magistrate, Saidapet, Chennai.

2. The petitioner, who is A.1, is a partner of the firm viz., M/s Sam Marketing and A.2 is an another partner. Both the accused are alleged to have committed the offence punishable under Secs 138 and 141 of Negotiable Instruments Act.

3. The learned Magistrate, after taking the cases on file, issued process to the petitioner and the co-accused. Aggrieved against that, the present petitions, to quash the proceedings have been filed.

4. In all the three cases, the parties are the same. The learned counsel for the petitioner submits that though the petitioner is a partner of the firm along with A.2, he is not the signatory of the cheque. Further, there is no specific allegation

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and averments made in the complaint to substantiate that he was also incharge of and responsible for the affairs of the business of the Company and under such circumstances, the petitioner has sought to quash the proceedings in C.C.Nos.224, 225 and 2349 of 2004, on the file of IX Metropolitan Magistrate, Saidapet, Chennai.

5. The learned counsel for the petitioner, to substantiate his contention, relied on the cases reported in 2003 (1) CTC 127 (Katta Sujantha(Smt) vs Fertilizers & Chemicals Travancore Ltd and 2005(5) CTC 65 (S.M.S. Pharmaceuticals Ltd vs Neeta Bhalla and another). The decision of the court is that only those persons in charge of and was responsible for the conduct of business of firm at the time of commission of the offence will be liable for criminal action.

6. Per contra, the learned counsel for the respondent submits that admittedly both the petitioners and the co-accused are partners and the amount has been borrowed by both the partners and the cheque has been issued in the name of the partnership firm. He also submits that though the cheque has been signed by A2, the petitioner is also equally liable for the offence and therefore, submits that sufficient materials are made available in the complaint to take cognizance of the case and hence, it is not a fit case to quash the proceedings.

7. In all these three cases, the point agitated is one and the same. No doubt a partner will be liable for conviction only if he is in charge of and responsible to the firm for conduct of business of firm. However, if there are materials to substantiate that offence was committed with consent and connivance of another partner and there are materials from the complaint and other list of documents filed at the time of filing the complaint, complaints cannot be quashed.

8. On a perusal of the complaint, it is mentioned that prior to the commencement of the partnership firm both the petitioner and the co-accused were working as Sales representatives with the husband of the complainant and under such circumstances, for developing their partnership business, both the accused requested the complainant to lend money and promissory note has been executed. A Legal Notice dated 6.12.2003 has been sent to the petitioner as well as the co-accused and though received and acknowledged, no reply has been sent by the petitioner to explain that he was not incharge of and responsible for the affairs of the Company. In such circumstances, this Court could safely come to a conclusion that the petitioner has committed the offence with the consent and connivance of another partner, who signed the cheque and the cases cited by the learned counsel for the petitioner are not applicable to the present case.

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9. Under such circumstances, I do not find any merit in these petitions. Therefore, these petitions are dismissed. Consequently, the connected Crl.M.Ps are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sr

To

The IX Metropolitan Magistrate,
Saidapet, Chennai.

3 ccs to Mr.V.T. Narendiran, Advocate, Sr. 75835
3 ccs to M/s. Jayaraman, Associates, Sr. 75025 to 75027

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VC (CO)
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